

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRINK'S GLOBAL SERVICES USA, INC.
Employer

and

Case 29-RC-260969

LAW ENFORCEMENT OFFICERS
SECURITY UNIONS (LEOSU),
LAW ENFORCEMENT OFFICERS
SECURITY AND POLICE BENEVOLENT
ASSOCIATION (LEOS-PBA)¹
Petitioner

ORDER

The Employer's and the Petitioner's Requests for Review of the Regional Director's Report on Challenges are denied as they raise no substantial issues warranting review.²

¹ We have treated the Regional Director's "Report" as a Decision. See Sec. 102.69(c)(1)(i) of the Board's Rules and Regulations; 79 Fed. Reg. 74308, 74412 fn. 464 (Dec. 15, 2014). The Regional Director inadvertently identified the Petitioner as "Law Enforcement Security Officers Union (LEOSU), Law Enforcement Officers Security and Police Benevolent Association (LEOS-PBA)." We have amended the caption to correct this error, which does not affect our decision.

² In denying the Employer's request for review of the Regional Director overruling its challenge to a ballot in which a voter marked and returned the sample ballot on the Notice of Election instead of the official ballot, we agree with the Regional Director that this case is governed by *Aesthetic Designs, LLC*, 339 NLRB 395 (2003). We note that, as in *Aesthetic Designs*, there is no evidence in this case that a sample ballot was used to identify a voter and that, contrary to NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11336.2(c), the instructions accompanying the Notice of Election did not contain the additional instruction notifying voters to mark and return the official ballot, not the sample ballot. In addition, the Board in *Reliable Trucking, Inc.*, 349 NLRB 812, 812 fn. 2 (2007), cited by the Employer, adopted pro forma the supplemental report in that case recommending that a challenge to a marked sample ballot be sustained and did not pass on the merits because that ballot was ultimately not determinative. Moreover, the supplemental report in *Reliable Trucking* recommended sustaining that challenge due to the unusual circumstances in which that marked sample ballot was belatedly discovered by a Board agent away from the counting area in a ballot box already determined and shown to the parties to be empty. *Id.* at 816.

In denying the Petitioner's request for review of the Regional Director overruling its challenge to two ballots received before the ballot count but one of which was not postmarked and the other was postmarked after the postmark due date specified in footnote 2 of the Regional

JOHN F. RING,	CHAIRMAN
MARVIN E. KAPLAN,	MEMBER
LAUREN McFERRAN,	MEMBER

Dated, Washington, D.C., November 25, 2020.

Director's Order Denying Motion to Reopen the Hearing and Decision and Direction of Election, the Regional Director properly cited to NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11336.5(c), and the cases cited therein. The Board has long held that ballots received before the ballot count should be counted, even if received after the return due date. *Id.* Moreover, neither the Notice of Election nor the accompanying instructions in this case referenced the postmark due date in the direction of election. Thus, even if the postmark due date—as opposed to the receipt due date—was relevant to whether the challenged ballots should be counted, voters cannot be faulted for not abiding by it.

Nevertheless, we recognize that the Direction of Election included a postmark provision that was inconsistent with the Casehandling Manual and that the Direction of Election and Notice of Election were inconsistent with each other with respect to this issue. While these inconsistencies did not affect the fairness or validity of this election, they have engendered an avoidable dispute over the proper election procedures and unfortunate questions about the manner in which the election was conducted. Particularly in light of the increased use of mail ballots during the Covid-19 pandemic, regions should review their mail ballot election templates and revise them as necessary to prevent such problems in the future.